

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
TIFFANY AND COMPANY, : 13-CV-1041 (LTS)
:
Plaintiffs, : August 23, 2013
:
v. : 500 Pearl Street
:
COSTCO WHOLESALE CORP., : New York, New York
:
Defendants. :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 THE COURT: Hi. It's Judge Freeman. Who do I have?

2 MR. MITCHELL: Good afternoon, Your Honor.

3 THE COURT: Who do I have from Tiffany?

4 MR. MITCHELL: Jeffrey Mitchell, Judith Cohen and
5 Don Abraham.

6 THE COURT: Okay. That's a lot of people. Who do I
7 have from Costco?

8 MR. DABNEY: You have Jim Dabney and Richard Koehl
9 and Victoria Doyle.

10 THE COURT: That's a lot of people also. Let's try
11 not to have a super long call so you don't both charge your
12 clients a ridiculous amount of money for having six people
13 involved in talking to the court.

14 I have one of my law clerks here with me, Angela
15 Shannon, and I have an electronic recording equipment which
16 may or may not work but if anyone wants to try to get a
17 transcript at least it's a possibility.

18 It's my understanding that the remaining issue on
19 which you need assistance has to do with the motion for a
20 protective order. Is that right?

21 MR. MITCHELL: Yes, Your Honor.

22 MR. DABNEY: That's correct, Your Honor.

23 THE COURT: Hold on. Do I have yes that's correct
24 from both sides?

25 MR. MITCHELL: Yes.

1 MR. DABNEY: Yes, from both sides.

2 THE COURT: Yes from both sides, okay. Well, that's
3 good because we have not focused on the other discovery
4 disputes that were originally issued hoping they were in fact
5 resolved.

6 So on the protective order issue here's what my
7 thinking is on it. The party that is seeking a protective
8 order has the burden to demonstrate its appropriateness and
9 Costco has sought this relief which is fairly unusual relief,
10 at least you haven't -- Costco hasn't really shown to us
11 through cases, other cases analyzing whether the type of
12 relief that you're seeking here is appropriate. So it strikes
13 me either that you haven't found those cases or that it's
14 fairly unusual.

15 And not the disclosure of client lists, just as a
16 disclosure matter wouldn't be a topic that has been addressed
17 by courts before but it seems that what you're seeking is an
18 order that issue disclose clients lists and this is what
19 plaintiffs must do with it and -- with that list and only what
20 plaintiff may do with it which is a) only to conduct a survey;
21 and b) only to conduct a survey with certain agreed protocols
22 and questions and the like. So it seems like you're saying
23 that the court should only allow the customer list to be
24 disclosed if you can control what your adversary does with
25 that list and in making those arguments it seems like what

1 Costco is doing is talking about what kinds of surveys have
2 been found admissible on which there's case law but that seems
3 to me not to be the question now for discovery purposes. It's
4 not up to me to decide what is or is not the best practice for
5 surveying. It's not up to me to decide what is or is not
6 admissible. It's not up to me to decide whether testimony by
7 individual witnesses about their experiences with actual
8 confusion if they had any would be rejected by the court or
9 would weigh only a certain way.

10 It does seem to me that that might be a question of
11 [inaudible] evidence as opposed to admissibility but this is
12 discovery in any event. So I think the question really ought
13 to boil down to whether or not the customer list should be
14 disclosed, not whether plaintiff should have to do with that
15 customer list what defendant says plaintiff has to do with it.

16 In looking at the question as to whether a customer
17 list is appropriately disclosed or not there does seem to be
18 some conflicting law on that but I'd rather agree with Judge
19 Francis and the decision that he issued on the subject which
20 was the Tory Birch decision that was cited to us, a very
21 recent decision of April 2013, and the case number on that was
22 12-CV-7422 and the Lexis cite for it was 2013 U.S. Dist. Lexis
23 47521.

24 I think that the list ought to be disclosed and that
25 plaintiff ought to use professional judgment and ethical

1 conduct and ought to contact witnesses in ways that are
2 appropriate in counsel's [inaudible] and I shouldn't tie
3 counsel's hands to only use the evidence or the witness list
4 in the way in which defendant dictates. That's my initial
5 thinking.

6 Now, before I make that an absolute rule I'll hear
7 from Costco as to what you think I've got wrong on that
8 analysis but that's my inclination.

9 MR. DABNEY: Well, thank you, Your Honor. What we
10 believe Your Honor has overlooked is the contents of the
11 affidavit from the NYU professor that we have provided to the
12 court that raises the question that's much narrower than the
13 categorical issue of whether customer lists are ever subject
14 to disclosure in a case like this.

15 What we have in this case is a discrete population
16 of people who bought certain products under circumstances in
17 which there was an assertedly ambiguous point of sale science.
18 We're not talking about an issue of likelihood of confusion in
19 this case because these signs were taken down voluntarily
20 before the case was brought. What we have here in this case
21 is both sides are interested in establishing what an
22 appreciable number, a substantial number of this population
23 did or did not believe because as a matter of law even if you
24 were going to be talking about infringement you would have to
25 with regard to this discrete population we're talking about

1 come up with a fairly sizeable number in order even for
2 liability to be established much less monetary relief.

3 THE COURT: Why -- what would prevent you from doing
4 your own survey using the types of protocols that your expert
5 thinks are most appropriate and what would prevent you from
6 arguing on motion or at trial that your protocol is better
7 than whatever plaintiffs separately has come up with however
8 it wants to introduce evidence and that the court should
9 instruct a jury or the court itself should weigh the evidence
10 accordingly or should accept your evidence and exclude some
11 aspect of plaintiff's as of yet unknown submission that it
12 wants to make with respect to confusion which I think is still
13 an issue in the case? It is after all a claim that I think
14 during the time that you had the sign up there it was
15 confusing.

16 MR. DABNEY: The reason, Your Honor, is that as
17 Professor Weiner has presented this population is such that
18 unless there is a controlled process, and we're not saying
19 that we control what the defendants -- what the plaintiffs do.
20 What we've proposed is that this question be resolved
21 according to the principles of the manual for complex
22 litigation if appropriate under the direction of a court
23 appointed special master.

24 THE COURT: But I don't think I've heard plaintiffs
25 say that they want to do a survey. If plaintiffs decide that

1 they want to do a survey maybe the two of you should get that
2 together, talk again, discuss whether you can have an agreed
3 protocol but I haven't even heard plaintiff say they want to
4 do that.

5 MR. DABNEY: If I can just finish.

6 THE COURT: Sure.

7 MR. DABNEY: Professor Weiner is of the view that
8 unless there's a controlled process it will be impossible to
9 conduct a valid survey and the suggestion seems to be that
10 instead of a scientific approach to answering those questions
11 in which these purchasers who for all the current record shows
12 they're just -- they're Costco members who have not responded
13 either to the media blitz or to a letter from Costco and
14 voiced any dissatisfaction that we have this question, what
15 did these people think, what do these people think when they
16 bought these products and what we're concerned about is that
17 if there isn't a controlled process which is -- which
18 according to the NCL and the only evidence before your court,
19 the only side that's put evidence in this record is Costco is
20 that if [inaudible] and actors start calling people in this
21 relatively small population it will take the population and
22 thereby make impossible --

23 THE COURT: Didn't you already do that when you sent
24 a letter to all the Costco members telling them that your
25 signage was clear and that you were only talking about the

1 Tiffany setting and that you don't think the lawsuit has
2 merit? Didn't you already potentially taint the pool yourself
3 more than plaintiff has done?

4 MR. DABNEY: The letter Your Honor is referring to
5 was sent after an enormous media blitz that was obviously
6 targeted at Costco members. It was not hard to be alive on
7 the planet and not have seen any of opposing counsel's
8 television interviews and the television stories that were
9 very much a part of this case. So, yes, both sides have made
10 communications which Costco members either have received or
11 likely have received.

12 The issue now is where we are now in August. If the
13 issue is what do an appreciable number of Costco buyers of
14 these rings, what did they believe when they bought the rings,
15 what did they believe -- the state of mind of these people.
16 There's either going to be a controlled process in which signs
17 [inaudible] are followed in order to determine what the
18 perceptions, opinions, beliefs, attitudes are or there's going
19 to be a free for all in which both sides will be -- it's just
20 going to be a free for all and we believe -- we are as eager
21 to find out this answer as they are and if it had been our
22 intention to try to interfere with this process we would have
23 been calling people.

24 We would have been doing things. What we have done
25 except for the one letter that was sent, which was a reaction

1 to a media blitz in which I don't believe was anything other
2 than a very, very modest response to what we considered to
3 have been highly inflammatory and false statements made to the
4 press by the plaintiffs, we had not had any contact with the
5 members and we have deliberately put to the court with
6 evidence our belief that there's only one way that both sides
7 can get at the truth here which is to use a scientific method
8 of answering this question rather than the a scientific method
9 that opposing counsel seems to want to follow.

10 So if the record is that there was a way that the --
11 this question could have been answered in a scientific fashion
12 to find out what proportion of this 2,500 population held
13 the -- allegedly the false beliefs supposedly held by them and
14 that path was not taken it will not be because we didn't do
15 everything in our power to try to make it possible for that
16 question to be answered.

17 THE COURT: Well, I have --

18 MR. DABNEY: And our view is that according to
19 Professor Weiner that once -- Paragraph 16 of his affidavit --
20 if you just try and make serial calls to selected ones of the
21 members on the list and you disregard to the results that are
22 no good and you come up with a handful of people that you're
23 going to use as if this was a preliminary injunction hearing
24 or something that's going to render -- that is not only not
25 going to yield any data that tells you anything about the

1 2,500 as a whole but it will take the pool so that Costco
2 won't be able to do a scientific study. So we're not --

3 THE COURT: Let me -- let me move this forward.
4 First of all, I want to hear from plaintiff on it too but
5 first of all this media blitz which you would have known about
6 as long as you were living on the planet I possibly don't
7 recall it but I don't remember seeing the media blitz. I was
8 on the planet so I'm not sure it reached every human being.

9 Your letter was not only sent specifically in the
10 mail to Costco members but to those people who actually
11 purchased a diamond ring at Costco. In other words, you
12 reached out in the actual mail directly to everyone in this
13 pool already. So in terms of saying that the plaintiff was to
14 blame here for tainting the pool and you only had a modest
15 response I'm not sure you can actually say that and have that
16 argument be persuasive.

17 Second, yes, you have evidence in the record but the
18 evidence that you have in the record really has to do with
19 whether certain types of surveys are the best types of surveys
20 and in accordance with the principles laid out and suggested
21 in a litigation manual and whether a survey if performed
22 should or should not be accepted by the court as being an
23 appropriate scientific -- following an appropriate scientific
24 method and things of that nature.

25 It really isn't evidence as to whether or not

1 discovery is appropriate under the discovery rules and the
2 arguments about that seem to be somewhat lacking. The
3 argument seem to be backing into it saying if you fast forward
4 to summary judgment or at trial the -- in order to have a
5 survey that is the best survey possible and that ought to be
6 accepted by the court the discovery process ought to be
7 managed in a certain way.

8 Now, it may be that to have the best survey it would
9 be a very good idea for the parties to confer and to discuss
10 protocol but if you want to have a survey it may be a good
11 idea for you to get plaintiff's blessing as to what you want
12 to do so that you don't have admissibility challenges and if
13 plaintiff wants to do a survey plaintiff should confer with
14 defendant to discuss protocol to see if you can stipulate to
15 avoid admissibility challenges. But I don't know why
16 plaintiff is necessarily precluded from talking to witnesses
17 and trying an alternative approach other than a survey.
18 [Inaudible] only a survey would be acceptable and why talking
19 to witnesses would not be a reasonable thing to do in the
20 discovery process.

21 If what you're saying is you don't want to produce
22 the list without knowing exactly what they're doing and it's
23 going to be a survey over which you have some control they
24 didn't have control over the direct letter you sent knowing
25 who the customers were and you went ahead and did that. You

1 wouldn't like it if they controlled what you said to your
2 customers. I don't think they're going to like it for you to
3 control anything that they can say to witnesses.

4 Let me just hear a little bit from plaintiffs
5 specifically on the question of whether you're planning to do
6 a survey or not with these -- with this list.

7 MR. MITCHELL: Thank you, Your Honor. The answer to
8 the question is at the moment no. We want the list because
9 we -- these people are fact witnesses. We also will then
10 learn the identity and location of where everybody lived who
11 bought these rings from the Costco stores in which they made
12 the purchases and the extent nationwide of the availability of
13 the product. So there are facts that come out of the list and
14 communicating with customers. Also that the purchase
15 experience with the same in California which is where we had
16 our experience and their direct contact with individuals the
17 same as it might have been in Chicago, in Miami, in New York
18 that people had the similar contact and experience, the
19 purchasing process, in other words what a customer goes
20 through that you need to contact to speak with a customer -- a
21 Costco employee to even access the rings.

22 They've made a big point about the boxes being
23 unbranded boxes when the boxes were delivered. The boxes were
24 not displayed in the display cases. I believe the boxes were
25 delivered after payment was made but we want to establish the

1 protocols for purchase, things like that.

2 Also, with respect to a survey and whether a survey
3 of this universe is even of any value, we've already -- we
4 have deposed -- we have taken four depositions of Costco
5 people including the CEO of the company at this point. We
6 don't even know what comprises the list. It seems as if the
7 demographics of a Costco customer from what I understand from
8 the testimony 50 to 55 married. Their memberships are
9 household memberships. So they're generally two membership
10 cards per household and if you look at their membership fees
11 generated and if you do just the simple math you'll see that
12 if you had 67 or 69 million members or whatever they have
13 times the membership fee you don't have enough membership fee
14 income for 69 million. So it's like two cards per household,
15 one payment per household.

16 Now, if your demographic is married and we're
17 talking about the purchase of engagement rings many of these
18 letters may very well have gone to people who were a) not the
19 purchasers, they were members who purchased for others. There
20 were members who purchased for other members of the family,
21 unmarried members of the family. So whether or not -- the
22 idea -- the notion that they had -- what we have here is a
23 list of members and presumably credit card or whatever
24 information to identify a purchaser reflected on their records
25 as the person taking responsibility for the purchase of the

1 ring. Whether or not that universe is an accurate universe
2 for purposes of doing a survey we wouldn't know until we had
3 facts.

4 So I think in the first instance is certainly from
5 the fact standpoint whether the purchasing experience of
6 individuals was the same as the one that was experienced by
7 Tiffany's own investigator and that's fact discovery. Our
8 simple view of the case, Your Honor, was that the identity of
9 fact witnesses who a party knows may have knowledge about the
10 case should be disclosed, identify as defined in the local
11 rules as all the various information that goes with identify.
12 This is no different than that and obviously these purchasers
13 had direct experience with signage, Costco experience.

14 They also are familiar with another issue in the
15 case that has developed is the methodology that Costco signs
16 its products in stores on point of sale advertising. The
17 evidence is that they have 4,000 products at any one time,
18 3,500 or so have little white signs. Of the 3,500 little
19 white signs in the store so far the only item that they've
20 identified to us other than this sign in which they say
21 theoretically a brand name was on the sign -- we haven't
22 drilled down on this yet -- the only one they could identify
23 where the brand name was on the sign but it wasn't meant to be
24 the brand, the CEO said he could think of Phillips head
25 screwdriver. I didn't look to see whether they actually used

1 Phillips on the sign but that was the only example he could
2 give and I could give you ten reasons why that's different.

3 But otherwise of the 3,500 or so signs in each of
4 the stores every time you see a brand like Tiffany on a sign
5 it was a product manufactured by that manufacturer and these
6 are witnesses who would then also be familiar with how signs
7 are at Costco and -- so there's a series numbers of facts here
8 that we cannot get from Costco itself nor can we identify the
9 witnesses so these are actual purchasers who would have had
10 the purchasing experience that we want to develop that
11 evidence on.

12 I agree with Your Honor by the way, whatever his
13 position is -- I mean if he wants to survey the group I might
14 be able through these witnesses show why a survey is
15 inappropriate but I'm not interested in the moment in serving
16 these people because they actually have experience. I don't
17 need to survey them. I can find out what happened.

18 MR. DABNEY: Your Honor, in response to a couple of
19 points that have been made. As I understand it, the
20 plaintiffs do want to survey the members. They just want to
21 do it in a scientific bias selective way, number one.
22 Secondly, Professor Weiner has said in Paragraph 17 of his
23 declaration "As subject Costco purchasers were told by one
24 party to this litigation with respect to their diamond ring
25 purchases that poll would likely make it difficult or

1 impossible for the other party to conduct its own polls
2 because the purchasers would have been tainted by being
3 informed about the nature of the investigation." So this is
4 not a situation in which both sides can just hire their own
5 experts and take random samples of the public at large and
6 they can independently go about and fight later about who has
7 the better survey methodology. This is an unusual case in
8 which what the plaintiff wants to do will make it difficult or
9 impossible for a scientific survey of this population to be
10 conducted by Costco.

11 So I would suggest that what has been described here
12 is Mr. Mitchell has just given all kinds of reasons why he
13 evidently believes that Costco members are going to say if
14 interviewed things from which an inference of mistake,
15 confusion, deception, et cetera can be drawn and we're not
16 trying to prevent that inquiry from being done. We're also
17 not trying to control it. What we're trying to do is to have
18 it done in accordance with the manual for complex litigation
19 so the choice is not whether to interrogate or whether to
20 interview. The issue is how to do that and given that it can
21 only be done once -- there hasn't been any counter to the
22 evidence that this can only be done once and that once
23 somebody has been interviewed then they're spoiled as far as
24 any subsequent testing can be done.

25 MR. MITCHELL: [Inaudible]

1 MR. DABNEY: Is it going to be done -- it doesn't
2 have to be done by either of the parties. We suggested if --
3 either the parties agree on a protocol for doing this or if
4 they can't the court can supervise it or appoint a special
5 master or whatever but the issue is not whether to survey.
6 They've just now say they want to survey but the way they want
7 to do it --

8 MR. MITCHELL: I don't want --

9 MR. DABNEY: -- is to conduct interviews by
10 [inaudible] calling some subset of the 2,500.

11 MR. MITCHELL: Your Honor, any questions that could
12 be asked by a partisan actor who has legal and commercial
13 interests in persuading the called party of a certain point of
14 view can be just as well asked by an independent neutral who
15 does not have any biases in either direction and can ask any
16 questions that are thought appropriate by plaintiffs to ask
17 that either the court approves or are agreed to. So it just
18 isn't -- it's just an unusual circumstance in that regard
19 given the size of the population and the particular
20 circumstances here which involves among other things a claim
21 for damages.

22 MR. DABNEY: Your Honor, I am not -- I'll say it
23 again. We're conducting a survey. I want to speak with
24 witnesses. In a 26 disclosure in the identity of witnesses
25 you get often times -- in cases you get a longer list of

1 witnesses than you actually -- you may speak with witnesses on
2 a list. You'll depose some. You won't depose others.
3 Whatever arguments counsel has about whatever evidence we ever
4 introduced or tried to use it comes from witnesses on the
5 list. They're preserved for trial. He can object to trial.
6 If we purport or he believes we're going to issue -- put into
7 evidence some kind of survey, his expert can challenge our
8 survey and he can make -- he's preserved his argument in terms
9 of challenging the evidence. I'm telling the court I want to
10 speak with these people because they're fact witnesses. We're
11 talking about a company that does business nationwide.

12 THE COURT: Let me say something.

13 MR. MITCHELL: [Inaudible].

14 THE COURT: [Inaudible]. If defendant wants a survey
15 and defendant is afraid that the pool will be tainted and if a
16 pool has -- how many people in it?

17 MR. DABNEY: 2,500 approximately.

18 THE COURT: 2,500. So I doubt that plaintiff is
19 going to go out and call 2,500 people. What would preclude
20 Costco from conducting its own survey with principals that it
21 believes are appropriate and when its neutral person calls
22 somebody if that persons says oh, well, I did in fact have a
23 long chat with plaintiff's counsel have part of that protocol
24 say okay, thank you very much and call the next person down on
25 the list to come up with what you would consider to be a more

1 neutral sample. Surely you'd be able to get a large enough
2 sample size from every jurisdiction that way unless plaintiff
3 is really going to blanket the universe with personal calls
4 and number two, why would you think that any of these people
5 would be uninfluenced in the first place by the letter that
6 you sent them but not only said that the signs were used to
7 describe the Tiffany style prong setting. You've already told
8 them that. You haven't even asked them questions that were
9 loaded questions. You have told them information and you have
10 told them you didn't believe your signs were inaccurate and
11 you also told them what an upstanding company you are because
12 you're telling them you can come back and get a refund on this
13 setting the stage for people to particularly like your
14 company.

15 So you've already got that out there which can be
16 challenged by plaintiff in terms of tainting the pool if it
17 wishes to. You can already say the pool has been tainted by
18 the media blitz which can't be undone by plaintiff that you
19 mentioned. But to the extent you're concerned about these
20 personal calls, what would stop you from doing your own survey
21 and just skipping by those particular people who have been --
22 you happen to at random discover who had talked to plaintiff?

23 MR. DABNEY: Well, there is the affidavit of Dr.
24 Weiner. Your Honor is correct that it -- depending on how
25 many people are contacted and recruited or not recruited, the

1 potential for getting a non random sample. I don't know that
2 it's as simple as Your Honor suggests because the random
3 [inaudible] function that would be used to generate a truly
4 representative sample may or may not work if --

5 THE COURT: Well, I do know a little bit about
6 surveying. Once upon a time before I was a lawyer I actually
7 worked on public opinion surveys and I can tell you that they
8 were randomly generated lists and occasionally when people
9 called randomly generated numbers either no one was home or in
10 response to question 1 or question 2 or question 3 the person
11 was determined to be ineligible to participate in that survey
12 for some reason. When that was determined they went to the
13 next one on the list and they got a large enough sample size.
14 So I would imagine there would be a way to work it out.

15 Let me ask this. Would there be any objection --

16 MR. DABNEY: Can I --

17 THE COURT: Hold on. Would there be any objection by
18 plaintiff to having defendant on its own do a survey sooner
19 rather than later before you've had -- let's say they disclose
20 the list tomorrow but then they start their survey next week
21 before you can be contacting everyone under the sun, would you
22 have a problem with them doing that? Would plaintiff have a
23 problem with defendant going forward and conducting a survey
24 as it sees fit once it's disclose the list at any time after
25 it discloses the list?

1 MR. MITCHELL: I don't propose to stop the defendant
2 from doing anything that the defendant is going to do to try
3 to defend the case and I would hope that they would not be
4 doing the same with me. That's the purpose of the call. So
5 it's not my intention to prevent Costco from putting on
6 whatever case Costco thinks it should put on.

7 THE COURT: I'm going to get to the end of this call.
8 I'm going to rule that the [inaudible] should be produced. I
9 am not persuaded by the arguments put forward which seem to me
10 to relate more to the quality of a survey when produced at
11 trial than to whether evidence is discoverable in litigation
12 for potentially more reasons than solely producing a survey.

13 I'm going to rule that the list should be provided.
14 I don't even see a huge competitive disadvantage here to
15 producing the list because since Tiffany and Costco are such
16 different sorts of retailers I don't see them as in direct
17 competition the way you sometimes see in cases and as was
18 noted in the case law that was cited when customer lists were
19 at issue. Sometimes you have two parties that are trying to
20 steal each other's customers and there becomes real
21 sensitivity there.

22 So I'm not even seeing that as the issue here. I'm
23 seeing that this is relevant, that these are names of
24 witnesses to facts that are essential to the case and should
25 be disclosed. If defendant wants to go forward and do its own

1 survey or if plaintiff decides it wants to do a survey it may
2 be best practice and avoidance of headaches later to try to
3 get agreement on survey protocol but if you can't do that you
4 should go forward and do what you do and you'll each have your
5 arguments as to why what the other one did was not appropriate
6 and you'll have your own arguments as to what -- why what you
7 have done is appropriate.

8 Then should the case not be resolved and should it
9 eventually go to motion or trial you can make all those
10 arguments bout admissibility or weight of the evidence. That
11 is my ruling.

12 MR. MITCHELL: Thank you, Your Honor.

13 THE COURT: You're welcome. If you want to get a
14 transcript you'll see it on there. If you want something in
15 writing what I would be inclined to do would be memo endorse
16 one of these letters and say that for the reasons stated on
17 the record the application is decided in this way.

18 MR. MITCHELL: Thank you, Your Honor. We'll follow
19 up to get a transcript. However Your Honor feels it best
20 to --

21 THE COURT: If you want to get a transcript call the
22 audio/visual folks and give them the case number and the case
23 date and explain that -- I'm sorry, the date of the conference
24 and explain that it was a telephone conference before me.
25 It's all centralized. If the system works it should be able

1 be retrieved.

2 MR. MITCHELL: Thank you.

3 THE COURT: You're welcome.

4 MR. MITCHELL: Have a nice week.

5 MR. DABNEY: Your Honor --

6 THE COURT: Yes.

7 MR. DABNEY: I just wanted to note on the record that
8 Costco -- I have to consult with my client but we may very
9 well be filing under Rule 72. I just wanted that on the
10 record.

11 THE COURT: You can certainly appeal my ruling to
12 Judge Swain. It's Judge Swain who has this case at this time;
13 right?

14 MR. DABNEY: Yes.

15 THE COURT: You can certainly appeal my ruling. It's
16 within your right to do so. That's why I was going to tell
17 you how I was going to handle this in terms of any written
18 opinion so that you were not confused about the date from
19 which that time would run. I will memo endorse something
20 today and say it's for the reasons stated on the record. If
21 you feel you need more time to appeal because you need time to
22 get the transcript I'd raise that with Judge Swain.

23 MR. DABNEY: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 * * * * *

1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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6 Shari Riemer

7 Dated: August 27, 2013
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**Tiffany and Company v. Costco Wholesale Corp. 13-CV-1041 (LTS) (DCF):
August 23, 2013 Conference before the Hon. Debra C. Freeman, U.S.M.J.**

Proposed corrections to Transcript

Cover Page:	Should be “conference before the Honorable Debra C. Freeman United States Magistrate Judge”
p.4, 1.11:	“[inaudible]” should be “weight of”
p.5, 1.2:	“[inaudible]” should be “opinion”
<u>p.5,1.12:</u>	<u>“the” should be “a”</u>
<u>p.6,1:17</u>	<u>“Weiner” should be “Winer”</u>
p.5, 1.17:	“science” should be “sign”
<u>p.7,1.7</u>	<u>“Weiner” should be “Winer”</u>
p.7, 1.18:	“NCL” should be “MCL”
<u>p.7,1:20</u>	<u>“[inaudible]” should be “partisan”</u>
<u>p.7,1:21</u>	<u>“take” should be “taint”</u>
p.8, 1.16-17:	“signs [inaudible]” should be “scientific processes”
<u>p.9,1:4</u>	<u>“had” should be “have”</u>
p.9, 1.8:	“a scientific” should be “a-scientific”
<u>p.9, 1:19:</u>	<u>“Weiner” should be “Winer”</u>
<u>p.10,1:1</u>	<u>“take” should be “taint”</u>
<u>p.11,1:3</u>	<u>“seem” should be “seems”</u>
p.12, 1.15:	“with” should be “was”
p.15, 1.7:	“series numbers” should be “series, numbers”
p.15, 1.15:	“serving” should be “surveying”
p.15, 1.23:	“As” should be “If”

p.15, 1.23:	“told” should be “polled”
<u>p.16, 1:1</u>	<u>“polls” should be “poll”</u>
<u>p.17,1:10:</u>	<u>“[inaudible]” should be “selectively”</u>
p.17, 1.11:	“MR. MITCHELL” should be “MR. DABNEY”
p.17, 1.22:	“MR. DABNEY” should be “MR. MITCHELL”
p.17, 1.23:	“We’re conducting” should be “We’re not conducting”
p.17, 1.24:	“In a 26” should be “In a Rule 26”
p.18, 1.5:	“object to” should be “object at”
<u>p.19,1.24:</u>	<u>“Weiner” should be “Winer”</u>
<u>p.20, 1.3:</u>	<u>“[inaudible]” should be “integer”</u>
p.21, 1.8:	“[inaudible]” should be “list”